

Message Text

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TAGS: ETRD, TU

SUBJECT: U.S. GRAIN CONTRACTS WITH TURKISH AGENCY

REF: STATE 114465 (PARA 4)

1. SOIL PRODUCTS OFFICE (TOPRAK MAHSULLERI OFISI GENEL MUDUR-LUGU -- TMO) WAS ESTABLISHED UNDER ORGANIZ LAW 3491 OF JULY 13, 1938. THAT LAW ARTICLE I, PARA. 1 ESTABLISHES TMO AS A LEGAL ENTITY WITH ALL CAPITAL SUPPLIED BY THE STATE, TO PERFORM FUNCTIONS LISTED IN THAT LAW AND MAKES IT SUBJECT TO LAW 3460 (LAW 3460 SUBSEQUENTLY ABOLISHED AND REPLACED BY LAW 440) WHICH DEFINES THE ORGANIZATION, ADMINISTRATION AND CONTROL OF STATE ECONOMIC ENTERPRISES. ARTICLE I, PARA 2 OF LAW 3491 STIPULATES THAT TMO'S RELATED MINISTRY OF THE MINISTRY OF COMMERCE. (RECENTLY THE COUNCIL OF MINISTERS MADE THE MINISTRY OF AGRICULTURE TMO'S RELATED MINISTRY.) LAW 3491 CONTINUES TO DESCRIBE IN GENERAL TERMS COMPOSITION OF TMO AND ITS FUNCTIONS. THESE FUNCTIONS INCLUDE, INTER ALIA, BUYING AND SEWLING DOMESTICALLY AND IMPORTING OF GRAINS. FOR EXAMPLE, SECTION I, ARTICLE 2, PARA "C", STATES THAT "IN CASE OF NECESSITY WITHIN THE FRAMEWORK OF THE DIRECTIVES TO BE ISSUED BY THE COUNCIL OF MINISTERS (TMO SHALL) BUY AND IMPORT WHEAT FROM FOREIGN MARKETS." AS ANOTHER FUNCTION TMO REGULATES DEALINGS IN OPIUM AS DESIGNATED BY THE MINISTRIES OF COMMERCE AND HEALTH IN COOPERATION WITH MINISTRY OF AGRICULTURE; ENDEAVORS TO IMPROVE

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PLANTING OF OPIUM POPPIES AND PRODUCTION OF OPIUM; REFINES AND

CLASSIFIES OPIUM STOCK; BUILDS UP STOCK OF ALL GRAIN AND NARCOTICS FOR DOMESTIC REQUIREMENTS UNDER THE DIRECTION OF THE COUNCIL OF MINISTERS.

2. LAW 440 PROVIDES THAT A STATE ECONOMIC ENTERPRISE IS FINANCIALLY AND ADMINISTRATIVELY AUTONOMOUS. ITS LIABILITY IS LIMITED TO ITS CAPITAL. IT PROVIDES (ARTICLE 3, PARA. 2) THAT STATE ECONOMIC ENTERPRXUSES ARE ESTABLISHED BY AN ORGANIC LAW (IN THE CASE OF TMO LAW 3491) AND ARE SUBJECT TO THAT LAW AND TO LAW 440 AND TO PROVISIONS OF CIVIL LAW WHERE NOT SPECIFICALLY EXCEPTED. LAW 440 STATES THAT LAW 440 SHALL BE ADMINISTERED BY THE COUNCIL OF MINISTERS. (THEREFORE THE COUNCIL OF MINISTERS MAY CHANGE THE "RELATED" MINISTRY, AS IT DID IN THE CASE OF TMO FROM MINISTRY OF COMMERCE TO THE MINISTRY OF AGRICULTURE.)

3. THE RELATED MINISTRY IS CHARGED WITH RESPONSIBILITY OF SEEING THAT STATE ECONOMIC ENTERPRISES FUNCTION IN ACCORDANCE WITH TURKEY'S LAWS, REGULATIONS, AND NORMAL BUSINESS PRACTICES AND ARE AUTHORIZED TO AUDIT ACCOUNTS, SCRUTINIZE OPERATIONS AND CONDUCT ECONOMIC AND FINANCIAL ANALYSIS.

4. NEITHER THE ORGANIC LAW (3491) ESTABLISHIING TMO NOR LAW 440 WHICH SETS UP GENERAL FRAMEWORK OF ALL STATE ECONOMIC ENTERPRISES STATES WHETHER TMO IS OR IS NOT A GOVERNMENT AGENCY NOR DO THEY CLEARLY ESTABLISH TMO AS PRIVATE ENTERPRISE. IN MANY RESPECTS IT MAY BE SIMILAR TO TVA OPERATING IN FIELD OF PRIVATE ENTERPRISE AND ACCOUNTABLE UNDER COMMERCIAL AND CIVIL LAW.

5. IN SUMMARY LOCAL ATTORNEY DESCRIBES TMO AS BEING LEGALLY MORE PRIVATE THAN GOVERNMENT; BUT AGREED THAT IN TURKEY DEGREE OF DIRECTION AND SUPERVISION BY RELATED MINISTRY AND HIGHER GOVERNMENT AUTHORITY GREATER THAN GENERALLY PROVIDED FOR IN LAWS. FOR EXAMPLE, IN SUBJECT GRAIN CASE, WE UNDERSTAND TMO RECEIVED INSTRUCTIONS FROM THE MINISTRY OF COMMERCE TO ISSUE INTERNATIONAL TENDER FOR WHEAT, AND REPORTEDLY TMO'S RECOMMENDED BID AWARDS WERE APPROVED BY THE MINISTRY OF COMMERCE. TO ESTABLISH THIS LEGALLY MIGHT BE MORE DIFFICULT IN ABSENCE OF ACCESS TO WRITTEN INSTRUCTIONS OR APPROVALS. FOR ALL INTENT AND PURPOSES, TMO DOES ACT AS AN ARM OR AGENT OF
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GOT, AND BUSINESSMEN DOING BUSINESS WITH IT ASSUME THEY ARE DEALING WITH GOT. MOREOVER, IN RECENT MONTHS THE TMO HAS RECEIVED CONSIDERABLE PUBLIC ATTENTION AS THE ORGANIZATION DESIGNATED BY THE TURKISH GOVERNMENT TO PURCHASE THE POPPY STRAW CROP AND TO HAVE PRIMARY RESPONSIBILITY FOR ENFORCING THE GOT'S CONTROL PROGRAM FOR POPPY CULTIVATION AND HARVESTING.

6. REFERENCE LAWS ARE AVAILABLE ONLY IN TURKISH, COPIES OF

WHICH WILL BE AIRMAILED IF REQUESTED.

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